IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 854 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHUPENDRABHAI BACHUBHAI - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :

THROUGH JAIL for Appellant(s) : 1,MS. R.V. ACHARYA for Appellant

MR.H.M.PRACHCHAK, ADDL.PUBLIC PROSECUTOR for Opponent-1, State

MR.MANOJ SHRIMALI for Original Complainant

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 10/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

Present appeal arises out of the judgment and order rendered by the learned Additional Sessions Judge, Valsad at Navsari in Sessions Case No.34 of 1997 on April 30, 1998, convicting the appellant for the offence of murder of Jagjivanbhai Mohanbhai and sentencing him to undergo rigorous imprisonment for life and, to pay a fine of Rs.200/- and in default to undergo simple imprisonment for 15 days.

2. The appellant came to be tried by the Sessions Court for murder of his father-in-law, Jagjivanbhai Mohanbhai allegedly committed by him in the afternoon hours of 19th December, 1996 at Block No.D/1/112 of the Government quarters at village *Chhapra*. It was charged that the appellant was doing no activity for earning. His wife, Harshaben was a government employee. His father-in-law, Jagjivanbhai Mohanbhai, the victim was staying with them at Navsari. It is the case of the prosecution that

because of unemployment of the appellant, the deceased used to rebuke him and / or taunt him. It is the case of the prosecution that this resulted into quarrels between the two off and on and tension in the relationship gradually built up.

2.1 On the day of incident, when the appellant's wife Harshaben returned home from the job, she found that one of the room was locked and her father was not at the home. On inquiry, she was told by the appellant that someone had come to see Jagjivan on motorcycle and Jagjivan had left for Surat on his motorcycle after locking the room. Harsha was also informed by the appellant that deceased-Jagjivan may go to Bharuch also.

2.1.1 Things went normal thereafter, but as Jagjivan did not return on 20th and even, till 21st morning, Harshaben became impatient and asked the appellant that, if Jagjivan did not return by afternoon, he may get in touch with Jayantibhai and / or Sureshbhai, who happened to be cousins of Harshaben and, then pursue the matter. As Jagjivan

did not return till afternoon of 21st, the appellant went to the office of Jayantibhai and told him that Harshaben had asked them to get in touch with her in the Court, her place of work. They both went to the Court where, Harshaben was working as a Clerk and thereafter, they decided to make inquiries by making telephone calls. Telephone call was made to Surendranagar to inquire if, Jagjivan had gone there, but they were told that Jagjivan was not at Surendranagar. After sometime, they once again made a call and received the same reply. Thereafter, at about 11:00 p.m. the appellant and the witnesses Jayantibhai and Sureshbhai were sitting outside the house of Jayantibhai on o*ta* and when they asked appellant about Jagjivanbhai, appellant disclosed that in the afternoon at about 14:00 to 14:30 hours on 19th December, 1996, there was a quarrel between him and deceased, Jagjivanbhai and in that quarrel the appellant had hit Jagjivan with a wooden log on his head and thereafter strangulated Jagjivan with a nylon rope. Jagjivan had succumbed to the assault. He, therefore, had locked the room from outside and placed the key of the lock behind the photograph of

deity.

2.2 On receiving this information, Jayantibhai and Sureshbhai got in touch with Harshaben, informed her about the same, went and verified if the key was there and found that the key was placed behind the photograph of deity. They therefore went to the Police, once again visited the place and then, ultimately F.I.R. was recorded. On basis of F.I.R. offence was registered and investigation started. Panchnama of place of incident was drawn. Inquest Panchnama was also drawn. Postmortem was got performed at the place of incident, as the dead body was found in a degenerated condition and ultimately, after collecting evidence, charge-sheet was filed against the appellant in the Court of Chief Judicial Magistrate, Navsari. Since the case against the appellant was triable exclusively by the Court of Sessions, the case was committed to the Sessions Court, Valsad at Navsari and Sessions Case No.34 of 1997 came to be registered.

2.2.1 Charge was framed against the appellant

at Exh.2. Appellant pleaded not guilty to the charge and claimed to be tried. The prosecution led its evidence. Statement of accused person under Section 313 of the Criminal Procedure Code was recorded where, he also tendered a written submission.

2.3 After considering the evidence led by the prosecution, the trial Court came to a conclusion that prosecution was successful in establishing the charge against the appellant-accused and recorded conviction as stated above. The appellant-accused aggrieved by the said conviction, has preferred this appeal.

3. Learned Advocate, Ms.Acharya, appears for the appellant. It is submitted on behalf of the appellant that the prosecution case is mainly in form of extra judicial confession and other circumstances. There is no direct evidence so far as incident is concerned. It was submitted that the trial Court has committed an error in appreciating the evidence and not appreciating the fact that the circumstances are not strong or sufficient enough to connect the

appellant with the crime. The extra judicial confession was made before interested persons viz. cousins of the wife of the appellant. It was submitted that the Investigating Officer has not made any probe or investigation in direction of likelihood of involvement of the appellant's wife in the incident. The investigation is, therefore, not free or fair. It was also submitted that conduct of witnesses is not natural or above suspicion; on the other hand conduct of the appellant has been natural and consistent. It was submitted that when there is no direct evidence to connect the appellant with the offence and the case is dependent mainly on extra judicial confession, conviction ought not to have been recorded. He submitted that the appeal may be allowed.

4. Respondent is represented by learned A.P.P., Mr.H.M.Prachchak, who is assisted by learned Advocate, Mr.Shrimali, who is appearing for the original complainant. According to Mr.Prachchak, the trial Court has taken into consideration all relevant aspects, while recording conviction. The factum of

making of extra judicial confession before witnesses, Jayantibhai and Sureshbhai is not challenged by the appellant. The witnesses have no axe to grind against the appellant and have no reason to falsely implicate him, after all the relationship is that of brother-in-law. It was submitted that the appellant did not have any close relative and, therefore, making of extra judicial confession before these witnesses is only a natural conduct. The appellant moved with them for two days and ultimately when was asked about the deceased, he blurted out the truth due to his of the pressure of guilt. Mr.Prachchak, submitted that apart from extra judicial confession, there are other circumstances, which also clinch the issue. The other circumstances are in form of discovery of blood stained clothes and the weapon by the appellant. The clothes are of the appellant's himself which are found to contain blood stains of the group of the deceased. The weapon also contains the same blood group. The F.S.L. Report supports this aspect and therefore, the two circumstances taken collectively would strongly connect the appellant with the crime.

4.1 Mr.Prachchak, has also drawn our attention to deposition of witness, Harshaben, who seems to be wife of the appellant. It was submitted that she has no reason to falsely implicate the appellant. It was indicated that randomly allegations are flung at the lady to malign her image and to assassinate her character without any basis. Our attention is also drawn to her cross-examination and towards Exh.38, only with a view to show that the improvements in the deposition ex-facie appearing in the cross-examination are in-fact not there and improvements or contradictions or omissions which are there are insignificant and minor. Mr.Prachchak, therefore, submitted that the appeal may be dismissed.

5. We have been taken through the record and proceedings of the trial Court.

5.1 Prosecution Witness No.1, Jayantibhai Gandubhai (Exh.8) and Prosecution Witness No.10, Sureshbhai Gandubhai (Exh.41) indicate that they happen to be cousins of Harsha, wife of the appellant and are diamond merchants. They are staying at

Navsari. Harshaben joined Government service in the year 1995 with District Court, Navsari as a clerk and shifted to Navsari from Junagadh. Her father, Jagjivanram was also staying with them. Jagjivanram was resident of Surendranagar. Around the time of incident, Jagjivanram had come to Navsari.

5.2 On 1/12/1996, appellant-Bhupendra came to their factory at about 3:30 p.m. and told them that Harshaben has called them in the Court. Therefore, Sureshbhai went on his motorcycle to the Court alongwith Bhupendrabhai. Bhupendrabhai came back after about an hour and told Jayantibhai that Harshaben's father, deceased, Jagjivanbhai had left for Surat at about 2:30 p.m. on 19/12/1996 and thereafter has not come back. The two witnesses therefore, went to the house of Harshaben at about 7:00 p.m. and inquired about Jagjivanbhai. They noticed that one of the room was locked and on inquiry, they were told that deceased-Jagjivan had locked the room and taken the key with him. At about 8:00 p.m. they talked to Yogesh on telephone at Surendranagar and inquired whether Jagjivanbahi had

gone to Surendranagar. They were told that Jagjivanbahi had not arrived at Surendranagar. At about 9:00 p.m. appellant, his wife-Harsha and their daughter came to the house of these witnesses. They were informed about the fact that the deceased had not gone to Surendranagar and again they telephoned at about 10:00 p.m. to Surendranagar and learnt the same thing. At about 11:00 p.m. while they were sitting on *ota* of their house, they inquired of appellant Bhupendrabhai about Jagjivanbhai. They were told by the appellant that he murdered his father-in-law in that locked room of his house by giving a blow with wooden log and then strangulating him with a rope. Thereafter, they went to the house of Harshaben at about 11:30 p.m. but, they did not have the key with them, then they asked for a torch from a neighbour, but could not get it. Therefore, they came back. Jayantibhai went to Navsari Rural Police Station for lodging of F.I.R., the Police came to their house, from there they took Bhupendra to the Police Station and at about 3:00 a.m. on 22/12/1996 they went to the house of Harshaben at village *Chhapra* alongwith Police. Bhupendra told them that

the key was lying near deity, therefore they went there and opened the door. By that time, neighbours had also come. On opening the door, they saw the dead body lying in a blood-soaked condition, that dead body was of Jagjivan. Thereafter, they went to the Police Station and lodged the F.I.R. at about 4:00 a.m. During cross-examination, certain contradictions have been asked. Importantly, what emerges from close scrutiny of the depositions is that factum of the appellant having made confession before these witnesses, has remained unchallenged and undisputed.

5.3 Prosecution Witness No.3, Narendra Jadavbhai (Exh.13) is a Panch witness to the panchnama of arrest of the accused-appellant and discovery of clothes and weapon by him. He says that the appellant discovered the clothes which were worn by him at the time of the incident from his house only from below the puja place. They were *banian* and *lungi*. He also discovered a wooden log from a loft. All the articles were stained with blood. He says that sample of hair of the appellant was also taken through him. He has been cross-examined but, nothing turns in favour of

the appellant. He sticks to his version about discovery.

5.4 Muddamal articles were sent to F.S.L. for examination and the F.S.L. Report Exh.44 indicates that the *lungi*, as well as, *banian* contained human blood of group 'B'.

6. The picture that emerges from the above evidence is that, there are three strong circumstances which connect the appellant with the crime. The first is that he has made extra judicial confession before witnesses, Jayantibhai and Sureshbhai. The factum of his having made this confession has remained unchallenged. It was canvassed that he had no reason to make this confession and that too after three days. We are not able to accept this contention for the reason that, it has come in evidence that the appellant hailed from Junagadh. He had shifted to Navsari in the year 1995 only when his wife got the job and had no other relative at Navsari. These two witnesses happened to be his wife's cousins. It also emerges from evidence

that relationship was reasonably close and they used to meet off and on. The appellant has made this confession when the two witnesses and the appellant were alone and when he was asked about the deceased. We find this to be quite natural. The confession has come on the third day. It is not that everything was forgotten and the pressure had eased off. During this time, the search was on and the pressure of search was increasing and the dead body was lying in the house itself and was bound to be detected in near future. Under these circumstances, it is natural that the appellant would reveal the truth, when he is asked by the witnesses who were the only persons in close relation at Navsari.

6.1 It was also contended that these two witnesses are interested witnesses, as they are relatives of the wife of the appellant. The relationship by itself cannot attribute any bias to the witnesses against the appellant. Just as they are relatives of the appellant's wife, they are relatives of the appellant as well and no apparent or even probable reason is shown to read a bias in them

against the appellant. It is for the first time during the trial that some letter is shown purported to have been written to the appellant's wife by some Manojbhai to show a motive for Harshaben to have bias against the appellant. But, so far as the witnesses, Jayantibhai and Sureshbhai are concerned, there is no reason to see or infer any reason for them to have any bias against the appellant. In our opinion, the factum of the appellant having made extra-judicial confession having remained unchallenged, the fact that the making of extra judicial confession by the appellant to these witnesses appears to us to be quite natural and absence of reason for the witnesses to falsely implicate the appellant by attributing the extra judicial confession to him are factors which establish the prosecution case against the appellant without doubt.

6.1.1 Learned Advocate for the appellant places reliance on the decision in case of **Jaspal Singh alias Pali Vs. State of Punjab, 1997 SC (Criminal) 358** to contend that in absence of any reasons to show why and how the accused have reposed

confidence in the witness for confessing guilt, such a confession may be improbable. In that case confession was allegedly made by accused persons before Sarpanch of another village and that Sarpanch had not given any reason as to why and how the accused persons had reposed confidence in him and confessed their guilt. In the instant case, we find from deposition of Prosecution Witness No.1 that, appellant confided in them when they asked about the deceased at about 11:00 p.m. at night when they all were alone. As discussed earlier, the witnesses were the only persons who were close relatives of the appellant at Navsari before whom he could have eased himself of the pressure of guilt. In our opinion, therefore, it cannot be said that the witnesses have not explained why and how the appellant reposed faith in them.

7. It was also contended that the investigation is not free, fair or free from doubt. To support this contention, attention was drawn towards the suggestion made to witness, Harshaben during cross-examination and letter Mark 'A' shown to her during

her cross-examination. We fail to understand as to how Investigating Officer could have made any inquiry or investigation in that direction because, this theory comes for the first time during cross-examination of witness-Harshaben. The contention is therefore devoid of merits.

7.1 It was also contended that there is delay in lodging the F.I.R. When the disclosure was made by the appellant at about 11:30 p.m. on 21/12/1996, why the F.I.R. was lodged at 4:00 a.m. on 22/12/1996 is not explained by the prosecution. We have earlier recorded and here we reiterate that after the disclosure by the appellant before witnesses Jayantibhai and Sureshbhai, they go to the house of the appellant then, they go to the Police, Police then goes to the house of the witnesses, picks up the appellant and, then they go to the house of the appellant once again at the government quarters at *Chhapara*, open the house, open the room and find the dead body and thereafter, the F.I.R. is lodged. It cannot be said that either the witnesses or the Police has acted in an unnatural or unreasonable

manner. The time taken between the extra judicial confession and lodgment of F.I.R. is thus properly explained.

8. We have gone through the trial Court judgment. The Court has considered all relevant aspect. Broadly, we are in agreement with the reasonings adopted and conclusion arrived at by the trial Court.

9. In our opinion, the chain of circumstances is properly established to link the appellant with the crime and conviction is, therefore, properly recorded. We do not find any other reason to interfere with the judgment and order impugned herein. Appeal therefore must fail and stands dismissed. The judgment and order of the learned Additional Sessions Judge, Valsad at Navsari in Sessions Case No.34 of 1997 on April 30, 1998 is confirmed. We are informed that the appellant is on bail by virtue of an order passed in Criminal Misc. Application No.3315 of 2004 on 23/4/2004. Appellant is ordered to surrender to custody within two weeks

and, in case, he fails to surrender within two weeks, the State Machinery should take appropriate steps in this regard.

(A.L.DAVE, J.)

(BANKIM N.MEHTA, J)

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